

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

RECEIVED

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DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

ASSURANCE COMPANY OF
AMERICA,

Plaintiff,

v.

ADMIRAL INSURANCE COMPANY,

Defendant.

Civil Action No.:

3:07CV544-mht

COMPLAINT FOR CONTRIBUTION AMONG CO-INSURERS

Assurance Company of America ("Assurance"), by its undersigned attorney, brings this Complaint for Contribution, alleging and stating as follows:

I. THE PARTIES

1. Plaintiff Assurance is a New York corporation with its principle place of business in Schaumburg, Illinois, and at all times relevant hereto was duly qualified to transact insurance business in the State of Alabama.

2. Admiral Insurance Company ("Admiral") is Delaware corporation with its principle place of business at 1255 Caldwell Road, Cherry Hill, New Jersey, and at all times relevant hereto transacted insurance business in the State of Alabama.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this civil matter pursuant to 28 U.S.C. §1332(a)(1) because the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and there exists complete diversity of citizenship.

4. Venue is proper in the United States District Court for the Eastern District of Alabama pursuant to 28 U.S.C. §1391(a)(2) because a substantial part of the events giving rise to this contribution claim occurred in Russell County, Alabama.

III. BACKGROUND FACTS - INSURANCE POLICIES

5. At all times relevant hereto, Assurance issued a liability policy of insurance, policy number RGP 24608821, ("Assurance policy"), for the period January 10, 1998 through January 10, 1999, and for the period August 18, 2001 through November 7, 2001, which provided coverage to Jernigan Builders, Inc. ("Jernigan").

6. At all times relevant hereto, Admiral issued policy number A99AG0648-01 ("Admiral policy"), for the period April 30, 1999 to April 30, 2000 and policy number A00AG0648-02 for the period April 30, 2000 to August 18, 2000, which provided coverage to Jernigan.

IV. BACKGROUND FACTS – UNDERLYING LAWSUIT

7. Jernigan was a defendant in a civil lawsuit brought by Norman S. Luton and Sonja L. Luton for damages arising out of defects with their home, which were first experienced in the spring of 1999, and then constantly through the next five years, including hardwood flooring warping, exposure to mold, water leakage, and settlement damage. The suit styled Norman S. Luton and Sonja L. Luton v. James Jernigan and Jernigan Builders, Inc. was filed in the Circuit Court of Russell County, Alabama, Case Number CV-2004-225 (the "Underlying Lawsuit") on June 17, 2004. (A copy is attached as Exhibit "A").

8. Upon notification from Jernigan, Assurance agreed to defend and indemnify Jernigan in the underlying lawsuit.

9. On several occasions, Jernigan, through its attorney in the underlying lawsuit,

requested in writing and by telephone, that Admiral provide a defense and indemnity in the underlying lawsuit. Admiral acknowledged the claim and the existence of the insurance in favor of Jernigan, but did not provide defense or indemnity to Jernigan. (See copy of correspondence from Admiral adjuster Ms. La Tanya Darby dated June 29, 2006, Copies of correspondence to Admiral adjuster Ms. La Tanya Darby dated July 14, 25, 27 (2), August 29, 2006; attached collectively as Exhibit "B").

10. The alleged defects and damages in the underlying lawsuit fell within coverage of the Admiral policy, invoking duties on the part of Admiral to defend and indemnify Jernigan. Admiral refused to provide either.

11. Assurance has defended the underlying lawsuit for Jernigan paying all investigative and defense costs. As a co-insurer of Jernigan, Admiral refused, and continues to refuse, to contribute to the same.

12. The underlying lawsuit eventually settled with Plaintiffs at mediation for \$350,000 with Assurance paying \$155,000 of said settlement. Defendants Little Insulation Company, Riley-Phillips Heating & Air, and Southern Guaranty Insurance Company contributed the remainder of the settlement. The settlement with Plaintiffs was made in good faith, reasonable under the circumstances and necessary to protect Jernigan from additional costs and liabilities. (Copies of the Release of All Claims, settlement check Assurance issued to Plaintiffs, stipulation of dismissal with prejudice, and order dismissing the underlying suit with prejudice are attached hereto as Exhibit "C"). Admiral refused and continues to refuse to contribute to the settlement of Plaintiffs' claims.

13. The terms, conditions and definitions of the Admiral Policy which is not currently in possession of Plaintiff are incorporated herein by reference as though fully set

forth hereinafter for all purposes. Once Admiral produces a copy of the Admiral Policy pursuant to the applicable Federal Rules of Civil Procedure, this Complaint will be amended.

14. Under the terms of the Admiral Policy, Admiral agreed to defend and indemnify Jernigan for all or some of the Plaintiffs' damages alleged, including but limited to, property damages or bodily injuries, which occurred during the Admiral policy periods.

15. The claims set forth in the underlying lawsuit against Jernigan are covered under the Admiral Policy, thereby triggering the duties of Admiral to indemnify Assurance for its *pro rata* share of defense and settlement costs.

V. FIRST CAUSE OF ACTION - EQUITABLE CONTRIBUTION

16. Assurance adopts and incorporates the allegations contained in paragraphs 1 through 15, as if fully set forth herein.

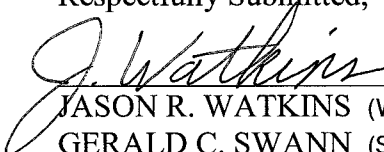
17. Admiral was under a contractual obligation to defend and indemnify Jernigan in the underlying lawsuit.

18. Admiral refused or otherwise failed to perform its obligations and duties to defend and indemnify Jernigan for the allegations and claims set forth in the underlying lawsuit.

19. As a result of Admiral's breach of its aforesaid obligations to defend and indemnify Jernigan and Assurance's fulfillment of said duties and obligations on behalf of Admiral, Assurance paid indemnity obligations in excess of its fair share under the overlapping coverages and as a result, is entitled to equitable contribution from Admiral, on a *pro-rata* basis, for the sums it incurred in the defense and indemnification of Jernigan Construction, including settlement amounts.

WHEREFORE, Plaintiff Assurance prays for judgment in its favor against defendant Admiral Insurance Company in an amount in excess of \$75,500 plus prejudgment interest pursuant to § 8-8-8 Ala. Code (1975), reasonable costs and expenses incurred in the defense and indemnification of Jernigan in the underlying suit, attorney's fees and such other further relief as the Court may deem equitable.

Respectfully Submitted,


JASON R. WATKINS (WAT068)
GERALD C. SWANN (SWA005)
Attorneys for Plaintiff

OF COUNSEL:

Jason R. Watkins, Esq.
BALL, BALL, MATTHEWS & NOVAK, P.A.
One Timber Way, Suite 200
Daphne, Alabama 36527
Phone: (251) 621-7680
Fax: (251) 6217681
E-mail: jwatkins@ball-ball.com

Gerald C. Swann, Esq.
BALL, BALL, MATTHEWS & NOVAK, P.A.
2000 Interstate Park Drive, Ste. 204
Montgomery, Alabama 36109
Phone:(334)387-7680
Fax: (334) 387-3222
E-mail: Gswann@ball-ball.com

In accordance with the Federal Rules of Civil Procedure and the local Rules of the Middle District of Alabama, the Clerk is requested to serve Defendant by CERTIFIED MAIL at:

Daniel A. MacDonald, Registered Agent
Admiral Insurance Company
1255 Caldwell Road
Cherry Hill, New Jersey 08034

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

NORMAN S. LUTON and
SONJA L. LUTON,

Plaintiffs,

Vs.

JAMES L. JERNIGAN and
JERNIGAN BUILDERS, INC.,

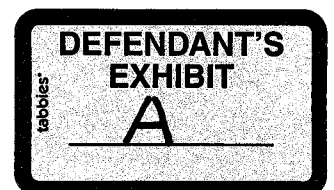
Defendants.

CASE NO. CV-2004- 225

COMPLAINT

Facts

1. On or about May 4, 1998, the Plaintiffs entered into an agreement with Jernigan Builders, Inc., whereby Jernigan Builders, Inc., agreed to construct a dwelling for the Plaintiffs. A copy of the agreement is attached hereto as Exhibit A. Construction was completed in or about October, 1998.
2. Defendant James L. Jernigan supervised the construction of the Plaintiffs' home.
3. The agreement provided that the work would be "performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner."
4. The home was not constructed according to specifications and was not constructed in a workmanlike manner. The following deficiencies exist:
Exterior:
(a) Improper roof/wall flashing between the garage and the main structure;



Monday, June 21, 2004 1:42 PM

Rodney Jernigan 334-297-5427

- (b) No weep holes at the intersection of the foundation and wood framing;
- (c) No through wall flashing at the foundation/wood frame collar joint;
- (d) No weep holes at head/sills of penetrations;
- (e) No field collar joint at crawlspace door void between brick and block;
- (f) Felt paper not terminated properly at crawl space door void;
- (g) Inadequate cross ventilation vents in crawl space;
- (h) Second floor mechanical room improperly ventilated for gas appliances;
- (i) Settlement cracks at laundry room window;
- (j) Unsealed mortar joints;
- (k) HVAC drains throughout the house are improperly installed;
- (l) HVAC condensation drains do not meet manufacturer's specifications;
- (m) Hardwood flooring is separated, warping and cupping due to excessive moisture;
- (n) The center load-bearing wall beneath the stairs is not supported properly, causing settling;
- (o) Dehumidifier drain improperly installed;
- (p) Crawl space vapor barrier improperly installed;
- (q) Floor joist insulation improperly installed in crawl space;
- (r) HVAC plenums and ductwork installed in contact with crawl space floor;
and
- (s) Condensation lines from HVAC are not trapped according to manufacturer's guidelines.

5. The HVAC units, condensation lines and ductwork are poorly installed and violates applicable building codes and the manufacturer's installation instructions. As a result, high volumes of moisture are introduced into the home. Adding to the high volume of moisture are:

- (a) Ductwork on the ground in the crawl space;
- (b) Poorly installed floor joists;
- (c) Leaking humidifier drains;
- (d) Incorrect crawl space ventilation;
- (e) Improper drainage;
- (f) Exterior brick veneer improperly draining due to lack of weep holes;
- (g) Improper flashing; and
- (h) Mortar joints not sealed.

6. The Plaintiffs first learned in or about May, 2004 that, as a direct and proximate result of the construction defects set out above, the Plaintiffs' home is severely contaminated with mold, fungi and/or microbial contamination. This contamination causes an unhealthy living environment in the Plaintiffs' home and has caused physical injuries to Plaintiffs in the form of allergy-like symptoms.

7. As a direct and proximate result of the above noted construction defects the Plaintiffs have suffered mental anguish and emotional distress and they will suffer mental anguish and emotional distress in the future.

COUNT I

Breach of Contract

8. The allegations of Paragraphs 1 through 7 of this complaint are adopted by reference thereto the same as if fully set out herein.

9. Jernigan Builders, Inc., breached its contract with the Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against Defendants in such sum, as the jury shall assess, plus interest and costs.

COUNT II

Negligence and Wantonness

10. The allegations of Paragraphs 1 through 9 of this complaint are adopted by reference thereto the same as if fully set out herein.

11. Jernigan Builders, Inc., negligently and/or wantonly constructed the Plaintiffs' home.

WHEREFORE, Plaintiffs demand judgment against Defendants in such sum, as the jury shall assess, plus interest and costs.

COUNT III

Negligence and Wantonness

12. The allegations of Paragraphs 1 through 11 of this complaint are adopted by reference thereto the same as if fully set out herein.

13. James L. Jernigan negligently and/or wantonly supervised the construction of the Plaintiffs' home and negligently and/or wantonly inspected the home.

WHEREFORE, Plaintiffs demand judgment against Defendants in such sum, as the jury shall assess, plus interest and costs.

COUNT IV

Breach of Warranty of Habitability

14. The allegations of Paragraphs 1 through 13 of this complaint are adopted by reference thereto the same as if fully set out herein.

15. Jernigan Builders, Inc., breached its implied warranty of habitability.

WHEREFORE, Plaintiffs demand judgment against Defendants in such sum, as the jury shall assess, plus interest and costs.

COUNT V

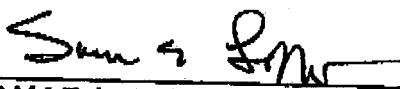
Breach of Warranty of Merchantability

16. The allegations of Paragraphs 1 through 15 of this complaint are adopted by reference thereto the same as if fully set out herein.

17. Jernigan Builders, Inc., breached its implied warranty of merchantability.

WHEREFORE, Plaintiffs demand judgment against Defendants in such sum, as the jury shall assess, plus interest and costs.

LOFTIN, LOFTIN & HALL

BY: 

SAM E. LOFTIN (LOF004)
ATTORNEY FOR PLAINTIFFS
POST OFFICE BOX 2566
PHENIX CITY, ALABAMA 36868-2566
(334) 297-1870

Plaintiffs demand a trial by jury.

LOFTIN, LOFTIN & HALL

BY: 

SAM E. LOFTIN
ATTORNEY FOR PLAINTIFFS

Please serve the Defendants by certified mail at the following address:

JAMES L. JERNIGAN
1605 27TH Avenue
Phenix City, Alabama 36870

JERNIGAN BUILDERS, INC.
c/o Mr. James L. Jernigan
1605 27TH Avenue
Phenix City, Alabama 36870

CONTRACT

Date: April 20, 1998

From: Jernigan Builders, Inc.
123 White Rock Road
Phenix City, AL 36869

Phone: 334-297-5451
Fax: 334-297-5427

Proposal Submitted To
Norman S. Luton, Jr.
Lou Luton

We hereby propose to furnish all the materials and perform all the labor necessary for the completion of one dwelling according to plans.

Addition of one 8' X 48' covered deck on back.

Master Bath tub and shower not included in this price. All counter tops and sinks to be covered under cabinet allowance.

ALLOWANCES:

Front Door	2,500.00
Electrical Fixtures	4,000.00
Floor Covering 672 yards @ 30.00	20,160.00
Cabinets	30,000.00
Appliances	11,000.00
	<u>67,660.00</u>

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of Three hundred ninety five thousand eighty seven dollars and no cents (\$395,087.00) with payments to be made as follows: First of each month for work in place and all stored materials.

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Workmens Compensation, Builders Risk and Public Liability Insurance on above work to be taken out by Jernigan Builders, Inc..

Respectfully Submitted April 20, 1998


Per. James L. Jernigan, President

ACCEPTANCE OF CONTRACT

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments as outlined above.

Accepted: 5-4-98

Signature: 

Date: 5-4-98

Signature: 

EXHIBIT A

AVS0309

ALABAMA JUDICIAL DATA CENTER
RUSSELL COUNTY

SUMMONS

CV 2004 000225.00
ALBERT L. JOHNSON

IN THE CIRCUIT COURT OF RUSSELL COUNTY

NORMAN S LUTON ET AL VS JAMES L JERNIGAN ET AL

SERVE ON: (D001)

PLAINTIFF'S ATTORNEY

JERNIGAN JAMES L
1605 27TH AVENUELOFTIN SAMUEL E
P O BOX 2566

PHENIX CITY ,AL 36870-0000

PHENIX CITY ,AL 36868-0000

TO THE ABOVE NAMED DEFENDANT:

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS, YOU OR YOUR ATTORNEY ARE REQUIRED TO MAIL OR HAND DELIVER A COPY OF A WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT TO THE PLAINTIFFS ATTORNEY(S) SHOWN ABOVE OR ATTACHED:

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGEMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. YOU MUST ALSO FILE THE ORIGINAL OF YOUR ANSWER WITH THE COURT BELOW.

() TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY EITHER RULES 4.1(B)(2) OR 4.2(B)(2) OR 4.4(B)(2) OF THE ALABAMA RULES OF CIVIL PROCEDURE: YOU ARE HEREBY COMMANDED TO SERVE THIS SUMMONS AND A COPY OF THE COMPLAINT IN THIS ACTION UPON DEFENDANT.

(P) THIS SERVICE BY CERTIFIED MAIL OF THIS SUMMONS IS INITIATED UPON THE WRITTEN REQUEST OF _____ PURSUANT TO RULE 4.1(C) OF THE ALABAMA RULES OF CIVIL PROCEDURE.

DATE: 06/17/2004

CLERK: KATHY COULTER

BY: *[Signature]*PO BOX 518
PHENIX CITY AL 36868-0510
(334)298-0516

RETURN ON SERVICE:

() CERTIFIED MAIL RETURN RECEIPT IN THIS OFFICE ON (DATE) _____
(RETURN RECEIPT HERETO ATTACHED)

() I CERTIFY THAT I PERSONALLY DELIVERED A COPY OF THE SUMMONS AND COMPLAINT TO _____

IN _____ COUNTY, ALABAMA ON (DATE) _____

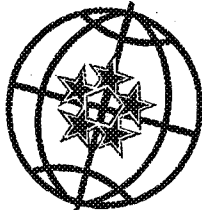
DATE _____

SERVER SIGNATURE _____

SERVER ADDRESS _____

TYPE OF PROCESS SERVER _____

OPERATOR: ANL
PREPARED: 06/17/2004



ADMIRAL INSURANCE
COMPANY

June 29, 2006

1255 Caldwell Road
P.O. Box 5725
Cherry Hill, NJ 08034-3220
Fax: (856) 429-3630

856-429-9200

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Gerald C. Swann, Jr.
Ball, Ball, Matthews & Novak, P/A.
2000 Interstate Park Drive, Suite 204
Montgomery, AL 36109

Re: Insured: Jernigan Builders
Plaintiff: Norman S. Luton v. James L. Jernigan, et al.
Policy No: A99AG0648-01 4/30/99 - 4/30/00
A00AG0648-02 4/30/00 - 8/18/00
Claim No: C118878

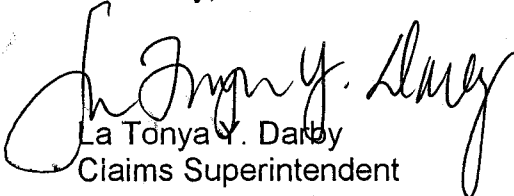
Dear Mr. Swann:

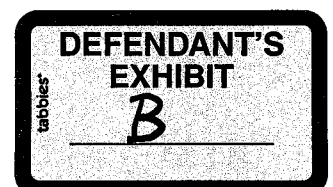
Admiral Insurance Company ("Admiral") acknowledges receipt of your tender of the referenced litigation. However, please be advised that we are unable to make a coverage determination at this time because we were not provided with a copy of the complaint(s). As such, kindly forward the complaint along with any and all information you have regarding this claim to the undersigned's immediate attention. Upon receipt and review of such information, we will provide you with our coverage determination.

Admiral Insurance Company reserves its right to disclaim coverage on any term, condition, provision or exclusion of the policies not specifically stated herein. Any action taken by Admiral Insurance Company or its agents, representatives or attorneys investigating any aspect of this claim will not constitute a waiver of any rights or defenses available to this Company, and shall not estop Admiral Insurance Company from exerting any such rights, terms, provisions, conditions or exclusions now or in the future.

If you have any questions or concerns, please contact me at the above number.

Sincerely,


La Tonya Y. Darby
Claims Superintendent



Cc: Karen Tingley
Phoenix Specialty Risk
3473 Lawrenceville-Suwanee Rd., Suite D
Suwanee, GA 39924

CERTIFIED MAIL™

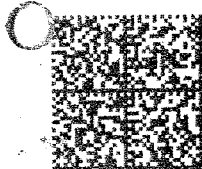


ADMIRAL INSURANCE
COMPANY

1255 Caldwell Road, P.O. Box 5725
Cherry Hill, New Jersey 08034-3220



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\$ 04.64⁰⁰
MINNY HOMES

Gerald C. Swann, Jr.
Ball, Ball, Matthews & Novak, P/A.
2000 Interstate Park Drive, Suite 204
Montgomery, AL 36109

BALL, BALL, MATTHEWS & NOVAK, P.A.

ATTORNEYS AT LAW

EST. 1891

RICHARD A. BALL, JR.
TABOR R. NOVAK, JR.
CLYDE C. OWEN, JR.
C. WINSTON SHEEHAN, JR.
WILLIAM H. BRITTAIN II
E. HAMILTON WILSON, JR.
RICHARD E. BROUGHTON
T. COWIN KNOWLES
GERALD C. SWANN, JR.
MARK T. DAVIS
JAMES A. RIVES
ALLISON ALFORD INGRAM

2000 INTERSTATE PARK DRIVE, SUITE 204
MONTGOMERY, ALABAMA 36109-5413
POST OFFICE BOX 2148
MONTGOMERY, ALABAMA 36102-2148
TELEPHONE (334) 387-7680
TELEFAX (334) 387-3222

EMAIL: FIRM@BALL-BALL.COM

N. GUNTER GUY, JR.
B. SAXON MAIN
EMILY C. MARKS
W. EVANS BRITTAIN
FRED B. MATTHEWS
WILLIAM D. MONTGOMERY, JR.*
JASON R. WATKINS
W. CHRISTOPHER WALLER, JR.
E. BRYAN PAUL

*ALSO ADMITTED TO PRACTICE IN FLORIDA

ONE TIMBER WAY, SUITE 200
DAPHNE, ALABAMA 36527
TELEPHONE (251) 621-7680
TELEFAX (251) 621-7681

July 14, 2006

VIA FEDERAL EXPRESS

La Tonya Y. Darby
Admiral Insurance Co.
1255 Caldwell Rd.
Cherry Hill, NJ 08034-3220

RE: Norman S. Luton v. James L. Jernigan, et al.
Circuit Court of Russell County, Alabama; CV-04-225

Dear Ms. Darby:

I appreciate your letter of June 29th, and I am enclosing several items for your review. Please be advised that time is of the essence in that trial is set for August 31st. I am including a copy of the Complaint, a deposition summary from the plaintiff, Mrs. Luton, and the expert reports that have been prepared. Should you need any additional information, please contact me at once and I will immediately provide that to you.

I remain,

Respectfully,

Gerald C. Swann, Jr.

GCSjr/ljh

BALL, BALL, MATTHEWS & NOVAK, P.A.

ATTORNEYS AT LAW

EST. 1891

RICHARD A. BALL, JR.
TABOR R. NOVAK, JR.
CLYDE C. OWEN, JR.
C. WINSTON SHEEHAN, JR.
WILLIAM H. BRITTAIN II
E. HAMILTON WILSON, JR.
RICHARD E. BROUGHTON
T. COWIN KNOWLES
GERALD C. SWANN, JR.
MARK T. DAVIS
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2000 INTERSTATE PARK DRIVE, SUITE 204
MONTGOMERY, ALABAMA 36109-5413
POST OFFICE BOX 2148
MONTGOMERY, ALABAMA 36102-2148
TELEPHONE (334) 387-7680
TELEFAX (334) 387-3222

EMAIL: FIRM@BALL-BALL.COM

N. GUNTER GUY, JR.
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FRED B. MATTHEWS
WILLIAM D. MONTGOMERY, JR.*
JASON R. WATKINS
W. CHRISTOPHER WALLER, JR.
E. BRYAN PAUL

*ALSO ADMITTED TO PRACTICE IN FLORIDA

ONE TIMBER WAY, SUITE 200
DAPHNE, ALABAMA 36527
TELEPHONE (251) 621-7680
TELEFAX (251) 621-7681

July 25, 2006

La Tonya Y. Darby
Admiral Insurance Company
P O Box 5725
Cherry Hill, NJ 08034-3220

C
O
P
Y

RE: Insured: Jernigan Builders
Case style: Norman S. Luton v. James L. Jernigan, et al.
Circuit Court of Russell County, Alabama; CV-04-225
Policy No.: A99AG0648-01 04/30/99-04/30/00
A00AG0648-02 04/30/00-08/18/00
Claim No.: C118878

Dear Ms. Darby:

Upon receipt of your letter of June 29th, I immediately by Federal Express sent to you copies of the Complaint, as well as a summary of the plaintiff's deposition and expert reports. For whatever reason, your letter did not reach me until July 12th. As of today's date, I have not spoken with you in regard to my client's claim for defense and indemnity in the suit filed by Dr. and Mrs. Luton and the trial which is currently set for Monday, July 31st.

The evidence indicates construction on this home was concluded in October/November 1998. In the spring of 1999, the plaintiffs experienced problems with their hardwood flooring cupping and warping. It was determined that moisture and improper floor insulation were the primary culprits. Apparently, this condition with the flooring would occur each spring. Based upon the information you provided, the first occurrence would have taken place during your policy period and would have continued to be a problem during the successive policy periods.

The Jernigans timely informed their local agent, the Mullins Agency, of the Lutons' claims. In fact, Mullins contacted Zurich Insurance, which was the carrier upon completion of construction, and then again from August 18, 2001 through November 7, 2001. Zurich has actively investigated and defended this case; however, it certainly

appears that a portion of the claimed damages by the plaintiffs were also covered under your policy periods. Clearly, proper notice was provided to the agent which acts as proper notice to the carrier.

Estimates for repairs to the Luton home now total in excess of \$200,000. It will also necessitate that during the repairs the plaintiffs vacate their property. Currently, a demand of \$750,000 has been made by the plaintiffs for settlement. Zurich is willing to contribute towards settlement, and has provided me with authority of \$75,000. In addition, the HVAC contractor, who is a third-party defendant has agreed to contribute \$75,000, and the carrier for the insulation company has agreed to contribute \$25,000. Please consider this a demand for your contribution of \$75,000 for full and final settlement and for the protection of your insured.

I look forward to hearing from you immediately.

I remain,

Respectfully,

Gerald C. Swann, Jr.

GCSjr/ljh

cc: (via fax)

Karen Tingley
Phoenix Specialty Risk
3473 Lawrenceville-Suwanee Rd., Ste. D
Suwanee, GA 39924

Helen Farrell
Zurich U.S.
Post Office Box 20791
Atlanta, Georgia 30320-0791

RE: Claim No.: 5710124629
Insured: Jernigan Builders
Claimant: Norman & Sonja Luton

Mullins Insurance Agency
P O Box 459
Phenix City, AL 36868-0459

07/25/2006 TUE 15:04

FAX 334 387 3222

BALL BALL MATTHEWS NOVAK

001

*** FAX TX REPORT ***

TRANSMISSION OK

JOB NO. 1329
DESTINATION ADDRESS 918564293630
PSWD/SUBADDRESS
DESTINATION ID
ST. TIME 07/25 15:03
USAGE T 00' 49
PGS. 3
RESULT OK

BALL, BALL, MATTHEWS & NOVAK, P.A.
Attorneys and Counselors
2000 INTERSTATE PARK DRIVE, SUITE 204
POST OFFICE DRAWER 2148
MONTGOMERY, ALABAMA 36102-2148
(334) 387-7680
TELEFAX (334) 387-3222

FACSIMILE TRANSMISSION

DATE: July 25, 2006

TO: La Tonya Y. Darby

FACSIMILE NO.: 856-429-3630

FROM: Gerald C. Swann, Jr., Esq.

You should receive this cover page and 2 additional pages.

ORIGINAL DOCUMENT BEING TRANSMITTED:

___ Will not be sent
___ Will be sent by Federal Express
X Will be sent by regular mail

If you have any problems in receiving this transmission, please call Landee at (334) 387-7680.

Thank you.

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BALL, BALL, MATTHEWS & NOVAK, P.A.

Attorneys and Counselors

2000 INTERSTATE PARK DRIVE, SUITE 204

POST OFFICE DRAWER 2148

MONTGOMERY, ALABAMA 36102-2148

(334) 387-7680

TELEFAX (334) 387-3222

FACSIMILE TRANSMISSION

DATE: July 25, 2006

TO: La Tonya Y. Darby

FACSIMILE NO.: 856-429-3630

FROM: Gerald C. Swann, Jr., Esq.

You should receive this cover page and 2 additional pages.

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BALL, BALL, MATTHEWS & NOVAK, P.A.

ATTORNEYS AT LAW

EST. 1891

RICHARD A. BALL, JR.
TABOR R. NOVAK, JR.
CLYDE C. OWEN, JR.
C. WINSTON SHEEHAN, JR.
WILLIAM H. BRITTAIN II
E. HAMILTON WILSON, JR.
RICHARD E. BROUGHTON
T. COWIN KNOWLES
GERALD C. SWANN, JR.
MARK T. DAVIS
JAMES A. RIVES
ALLISON ALFORD INGRAM

2000 INTERSTATE PARK DRIVE, SUITE 204
MONTGOMERY, ALABAMA 36109-5413
POST OFFICE BOX 2148
MONTGOMERY, ALABAMA 36102-2148
TELEPHONE (334) 387-7680
TELEFAX (334) 387-3222

EMAIL: FIRM@BALL-BALL.COM

N. GUNTER GUY, JR.
B. SAXON MAIN
EMILY C. MARKS
W. EVANS BRITTAIN
FRED B. MATTHEWS
WILLIAM D. MONTGOMERY, JR.*
JASON R. WATKINS
W. CHRISTOPHER WALLER, JR.
E. BRYAN PAUL

*ALSO ADMITTED TO PRACTICE IN FLORIDA

ONE TIMBER WAY, SUITE 200
DAPHNE, ALABAMA 36527
TELEPHONE (251) 621-7680
TELEFAX (251) 621-7681

July 27, 2006

VIA FACSIMILE

La Tonya Y. Darby
Admiral Insurance Company
P O Box 5725
Cherry Hill, NJ 08034-3220

RE: Insured: Jernigan Builders
Case style: Norman S. Luton v. James L. Jernigan, et al.
Circuit Court of Russell County, Alabama; CV-04-225
Policy No.: A99AG0648-01 04/30/99-04/30/00
A00AG0648-02 04/30/00-08/18/00
Claim No.: C118878

Dear Ms. Darby:

I appreciate speaking with you regarding the above-referenced case. As I indicated, time is of the essence, and while I recognize it is the eleventh hour, the potential risk to Admiral's insured still exist, and it is unfortunate the agent failed to place Admiral on notice sooner.

Also, I am surprised to learn from you that the Federal Express package of July 14th did not reach you. According to Federal Express tracking, this package was received by "R. Robles" on July 17, 2006 at 9:20 a.m. I am faxing with this letter a copy of the Federal Express receipt, Complaint, as well as the Zurich trial litigation form which I recently prepared.

As I indicated, there is a \$750,000 demand which exceeds Zurich's policy limits, and therefore, my client is potentially exposed to an excess judgment. Efforts are being made at a potential settlement, and in fact, we are going to meet in an informal mediation tomorrow, Friday, July 28, 2006 at 2:00 in the plaintiffs' attorney's office. Your immediate attention to this matter would be much appreciated.

I remain,

Respectfully,

Gerald C. Swann, Jr.

GCSjr/ljh

cc: (via fax)

Kathy Jernigan
Jernigan Builders
1605 27th Ave.
Phenix City, AL 36870

Helen Farrell
Zurich U.S.
Post Office Box 20791
Atlanta, Georgia 30320-0791

RE:	Claim No.:	5710124629
	Insured:	Jernigan Builders
	Claimant:	Norman & Sonja Luton

Mark S. Carter
P O Box 730
Phenix City, AL 36868

BALL, BALL, MATTHEWS & NOVAK, P.A.

Attorneys and Counselors

2000 INTERSTATE PARK DRIVE, SUITE 204
POST OFFICE DRAWER 2148
MONTGOMERY, ALABAMA 36102-2148
(334) 387-7680
TELEFAX (334) 387-3222

FACSIMILE TRANSMISSION

DATE: July 27, 2006

TO: La Tonya Y. Darby

FACSIMILE NO.: 856-429-3630

FROM: Gerald C. Swann, Jr., Esq.

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*** FAX TX REPORT ***

TRANSMISSION OK

JOB NO. 0082
DESTINATION ADDRESS 918564293630
PSWD/SUBADDRESS
DESTINATION ID
ST. TIME 07/27 09:13
USAGE T 03' 11
PGS. 18
RESULT OK

BALL, BALL, MATTHEWS & NOVAK, P.A.
Attorneys and Counselors
2000 INTERSTATE PARK DRIVE, SUITE 204
POST OFFICE DRAWER 2148
MONTGOMERY, ALABAMA 36102-2148
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FACSIMILE TRANSMISSION

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EST. 1891

2000 INTERSTATE PARK DRIVE, SUITE 204
MONTGOMERY, ALABAMA 36109-5413

POST OFFICE BOX 2148
MONTGOMERY, ALABAMA 36102-2148

TELEPHONE (334) 387-7680

TELEFAX (334) 387-3222

EMAIL: FIRM@BALL-BALL.COM

July 27, 2006

RICHARD A. BALL, JR.
TABOR R. NOVAK, JR.
CLYDE C. OWEN, JR.
C. WINSTON SHEEHAN, JR.
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*ALSO ADMITTED TO PRACTICE IN FLORIDA

ONE TIMBER WAY, SUITE 200
DAPHNE, ALABAMA 36527
TELEPHONE (251) 621-7680
TELEFAX (251) 621-7681

VIA FACSIMILE

La Tonya Y. Darby
Admiral Insurance Company
P O Box 5725
Cherry Hill, NJ 08034-3220

RE: Insured: Jernigan Builders
Case style: Norman S. Luton v. James L. Jernigan, et al.
Circuit Court of Russell County, Alabama; CV-04-225
Policy No.: A99AG0648-01 04/30/99-04/30/00
A00AG0648-02 04/30/00-08/18/00
Claim No.: C118878

Dear Ms. Darby:

I appreciate your return call. I am sorry the Zurich litigation claim forms did not provide you with as much information as you had hoped, and per your request, I am attaching several report letters which summarize the depositions of the plaintiffs and the experts. Also, you should note that the Federal Express package which was sent to you included expert reports which detail the identified problems at the home.

I appreciate your attention, and please feel free to contact me with any additional questions you may have.

I remain,

Respectfully,

Gerald C. Swann, Jr.

GCSjr/ljh

cc: (via fax)

Kathy Jernigan
Jernigan Builders
1605 27th Ave.
Phenix City, AL 36870

Helen Farrell
Zurich U.S.
Post Office Box 20791
Atlanta, Georgia 30320-0791

RE: Claim No.: 5710124629
 Insured: Jernigan Builders
 Claimant: Norman & Sonja Luton

Mark S. Carter
P O Box 730
Phenix City, AL 36868

BALL, BALL, MATTHEWS & NOVAK, P.A.

Attorneys and Counselors

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(334) 387-7680
TELEFAX (334) 387-3222

FACSIMILE TRANSMISSION

DATE: July 27, 2006

TO: La Tonya Y. Darby

FACSIMILE NO.: 856-429-3630

FROM: Gerald C. Swann, Jr., Esq.

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*** FAX TX REPORT ***

TRANSMISSION OK

JOB NO. 1464
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PSWD/SUBADDRESS
DESTINATION ID
ST. TIME 07/27 15:47
USAGE T 03' 18
PGS. 15
RESULT OK

BALL, BALL, MATTHEWS & NOVAK, P.A.
Attorneys and Counselors
2000 INTERSTATE PARK DRIVE, SUITE 204
POST OFFICE DRAWER 2148
MONTGOMERY, ALABAMA 36102-2148
(334) 387-7680
TELEFAX (334) 387-3222

FACSIMILE TRANSMISSION

DATE: July 27, 2006

TO: La Tonya Y. Darby

FACSIMILE NO.: 856-429-3630

FROM: Gerald C. Swann, Jr., Esq.

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*ALSO ADMITTED TO PRACTICE IN FLORIDA

ONE TIMBER WAY, SUITE 200
DAPHNE, ALABAMA 36527
TELEPHONE (251) 621-7680
TELEFAX (251) 621-7681

August 29, 2006

VIA FEDERAL EXPRESS

La Tonya Y. Darby
Admiral Insurance Co.
1255 Caldwell Rd.
Cherry Hill, NJ 08034-3220

RE: Norman S. Luton v. James L. Jernigan, et al.
Circuit Court of Russell County, Alabama; CV-04-225

Dear Ms. Darby:

At the request of Helen Farrell, I am forwarding to you documents and materials. It is quite likely some of these may be repetitive or redundant with those previously sent, though out of an abundance of caution, I want to be sure you have all of the necessary materials.

I am enclosing the repair estimates of EmerX, Weston Solutions, Southeastern Environmental, along with the depositions and summaries of the experts George Osborne, Jeff Jones and Dave Bennett. Also, I am enclosing the deposition transcript of Dr. Tom Cooper, along with a disc of his photographs, though his deposition had not yet been summarized. Finally, I do include a deposition summary for the plaintiff Sonja Luton.

Should you need any additional information or documentation, please do not hesitate to contact me.

I remain,

Respectfully,

Gerald C. Swann, Jr.

GCSjr/ljh
Enclosure

**IN THE CIRCUIT COURT OF
RUSSELL COUNTY, ALABAMA**

**NORMAN S. LUTON
and SONJA L. LUTON**

Plaintiffs,

v.

**JAMES L. JERNIGAN
and JERNIGAN BUILDERS, INC.**

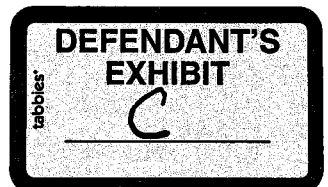
Defendants.

Case No.: CV-04-225

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned NORMAN S. LUTON and SONJA L. LUTON (PLAINTIFFS) for and in consideration of the sum THREE HUNDRED FIFTY THOUSAND and 00/100 Dollars (\$350,000.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged on behalf of JAMES JERNIGAN, JERNIGAN BUILDERS, INC., ZURICH INSURANCE COMPANY, LITTLE INSULATION COMPANY, RILEY-PHILLIPS HEATING & AIR and SOUTHERN GUARANTY INSURANCE COMPANY (HEREINAFTER "RELEASED PARTIES"), this day in hand paid by, or on account of "RELEASED PARTIES", there being no promises of further benefit or payment to be received, do hereby release and discharge, and by these presents do for themselves, their administrators, successors, insurers, heirs, attorneys, executors, and assigns, release and forever discharge the said "RELEASED PARTIES" and each of its/their administrators, successors, insurers, affiliates, sister companies, agents, heirs, attorneys, executors, and assigns, and all other persons, firms and corporations, both known and unknown, jointly and severally of and from any and all claims, demands, actions and causes of



action, suits, regarding the facts and circumstances surrounding that above lawsuit filed in the Circuit Court of Russell County Alabama, and from all costs, damages, expenses, compensation and liabilities of every kind, character and description, either direct or consequential, at law or in equity which PLAINTIFFS may have had at any time heretofore, or may have at any time hereafter arising from, or resulting from any of the facts and circumstances surrounding the above identified lawsuit.

Including, but without limiting the following, for and in consideration of the payment of said sum as aforesaid, the receipt of which in full is hereby acknowledged by the below signed who hereby for themselves, their successors, heirs, attorneys, and assigns forever release, acquit and discharge the "RELEASED PARTIES", and their/its administrators, successors, heirs, attorneys, executors, insurers, and assigns, and any and all other persons, firms, corporations, affiliates, sister companies, agents, employees and parties whatsoever, jointly and severally, of and from any and all claims, demands, actions, causes of action, suits, including but not limited to the lawsuit filed above, costs, damages, expenses, compensation and liability of every kind, character and description, either direct or consequential at law or in equity, which PLAINTIFFS or a party claiming under or subrogated or succeeding in any manner to any of their rights or interest, including any insurer or creditor that they may have now, may have had at any time heretofore, on account of or in any manner growing out of or arising from the facts and circumstances surrounding the lawsuit filed above.

The below undersigned understand and agree that none of the parties hereby released, nor any other party admits or has admitted liability on account of any payment herein received to have been made or otherwise; that it is understood and agreed that this settlement shall never be treated as an admission of liability at any time or in any manner whatsoever; that said released parties deny

liability and therefore is intended by the "RELEASED PARTIES" merely to avoid litigation and to buy them peace.

It is also agreed and understood that the PLAINTIFFS shall indemnify and defend, including all legal expenses, the "RELEASED PARTIES" from any and all claims by third parties for liens and/or subrogation. The PLAINTIFFS agree to negotiate for the settlement of any and all liens and claims of subrogation and are responsible for the satisfaction of any such claims.

To procure the payment of the consideration hereinbefore recited, the below signed hereby declares that they are correctly named and listed herein and that they are the proper party to have brought the above identified action and to enter into this agreement; that no representation about the nature and extent of any damages sustained made by any attorney, or agent or any party hereby released or any other party, has induced them to execute this Release; that in determining the amount of said sum paid, as aforesaid, there has been taken into consideration not only ascertained damages, but also the possibility that there might be other damages which might arise in the future as the result of the incident or matters referred to herein, so that consequences not now anticipated may result from said incident or matters, acts upon the advice of their own counsel as well as on their own judgment, belief and knowledge of the nature and extent of the damages, losses and expenses sustained by reason of said incident.

IN WITNESS WHEREOF, the undersigned has hereunto caused this instrument to be executed on this the 10th day of October 2006.



NORMAN S. LUTON



SONJA L. LUTON



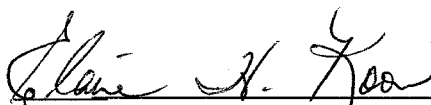
SAM E. LOFTIN
Attorney for plaintiffs

STATE OF ALABAMA)

COUNTY OF Russell)

I, the undersigned, a Notary Public in and for said State and County, hereby certify that the above signed to the foregoing Release and who is known to me, acknowledge before me on this day that, being informed of the contents of the instrument, has executed the same voluntarily.

Given under my hand this 10th day of October, 2006.



NOTARY PUBLIC

My commission expires: MY COMMISSION EXPIRES AUGUST 8, 2010

THE FACE OF THIS DOCUMENT HAS A BLUE BACKGROUND - NOT A WHITE BACKGROUND. SIMULATED WATERMARK ON BACK. HOLD AT AN ANGLE TO VIEW.



ZURICH AMERICAN INSURANCE COMPANY
ON BEHALF OF ASSURED

CHECK NO. 1260217152

P.O. BOX 981150
WEST SACRAMENTO CA 95798

DATE ISSUED: 08/19/06

VOID AFTER 180 DAYS

CLAIM NUMBER: 571-0124629-001 HF

AMOUNT: ONE HUNDRED FIFTY-FIVE THOUSAND AND 00/100

Dollars

Pay to the order of Dr. Norman & Sonya Luton and their attorney, Sam Loftin

\$155,000.00

LAUREL BANK NA
CHICAGO IL 60603

Thomas A. Bradley

THE BACKGROUND IS COLORED

⑈1260217152⑈ ⑆071923022⑆ 559⑈888001⑈0⑈

IN THE CIRCUIT COURT OF
RUSSELL COUNTY, ALABAMA

NORMAN S. LUTON
and SONJA L. LUTON

Plaintiffs,

v.

JAMES L. JERNIGAN
and JERNIGAN BUILDERS, INC.

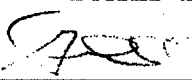
Defendants.

Case No.: CV-04-225

JOINT STIPULATION OF DISMISSAL

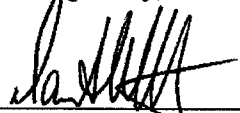
Come now the parties by and through their respective counsel of record, and hereby stipulate that the above-styled action shall be dismissed with prejudice each party bearing his/her/its own cost.

DATED this the 3 day of Oct, 2006.


GERALD C. SWANN, JR.
Attorney for Jernigan

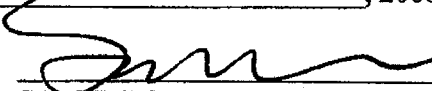
OF COUNSEL:

Ball, Ball, Matthews & Novak, P.A.
2000 Interstate Park Drive, Suite 204
Post Office Box 2148
Montgomery, Alabama 36102-2148


DANIEL S. WOLTER
Attorney for Little Insulation


OF COUNSEL:

Gaines, Wolter & Kinney
3500 Blue Lake Dr., Ste. 425
Birmingham, AL 35243


SAM E. LOFTIN
Attorney for Plaintiff

OF COUNSEL:

Loftin, Loftin & Hall
P O Box 2566
Phenix City, AL 36868-2566


NEAL CALLAHAN
Attorney for Riley-Philips Heating & Air

OF COUNSEL:

Waldrip, Mullin & Callahan
P O Box 351
Columbus, GA 31902

FILED IN OFFICE
2006 OCT 10 PM 4:21
CLERK / DIST. COURT
RUSSELL CO. ALA

NORMAN S. LUTON, et al.,)	IN THE CIRCUIT COURT OF
PLAINTIFFS,)	RUSSELL COUNTY, ALABAMA
VS)	
JAMES L. JERNIGAN, et al.,)	CASE NO. CV 04-225
DEFENDANTS,)	

ORDER

Upon parties' "Joint Stipulation of Dismissal" having been filed herein,


It is

ORDERED, ADJUDGED, AND DECREED:

That motion is granted and this case is dismissed with prejudice.

That notice shall issue to all parties.

DONE this the 17th day of November 2006.



ALBERT L. JOHNSON, CIRCUIT JUDGE

FILED IN OFFICE
2006 NOV 17 AM 11:25
CLERK OF DIST. COURT
RUSSELL COUNTY, ALA